over-emphasise that it is the duty of a plaintiff who issues a writ to serve it promptly. We examined the reasons given by Mr. Lim Kia Tong for the delay. On the particular facts before us, we came to the conclusion that the delay was not fatal. We were satisfied in all the circumstances that the delay has been induced, or contributed to, by the words and conduct of the solicitors for the Defendant.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Thomas Tham & Partners.*

RAMU ANNADAVASCAN & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Thean & Chua JJ.) January 29, 1985]
[Singapore – Criminal Appeal No. 8 of 1984]

Criminal Law & Procedure – Murder – Common intention – 2nd appellant inflicted fatal blow and poured petrol on deceased – Evidence – Penal Code (Cap. 103), ss. 302 & 304 – Criminal Procedure Code (Cap. 113), s.121(6).

Penal Code, ss. 34 & 302 – Murder – Common intention.

The appellant were convicted of murder under section 302 read with section 34 of the Penal Code and was sentenced to death. The learned trial judge found it was the 2nd appellant who inflicted the fatal blow on the deceased's head, and that there was a common intention of both the appellants to cause injuries to the deceased which in the ordinary course of nature would cause death. There was evidence that the deceased was still alive when the 2nd appellant poured petrol on the deceased and the 1st appellant set fire to the deceased.

Held, dismissing the appeal (1) at the time or immediately before the fatal blow was inflicted on the deceased the appellants had the common intention.

(2) so far as the 2nd appellant is concerned, the absence of a common intention was immaterial as he inflicted the injuries which caused the death of the deceased.

COURT OF CRIMINAL APPEAL.

Subhas Anandan for the 1st appellant.
R. Pala Krishnan for the 2nd appellant.
Spencer Gwee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The Appellants were convicted of the following offence, namely:

"That you between 1.30 p.m. on the September 20, 1981 and 9.25 a.m. on the September 25, 1981 at East Coast Parkway, 5 kilometres, Singapore, in furtherance of the common intention of you both, committed murder by causing the death of one, Kalingam s/o Mariappan, and you have thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Chapter 103)."

The facts as proved before the learned trial judges are these. On September 20, 1981 at about 12 o'clock noon the first and second Appellants went to a coffee stall at a Hawkers' Centre. There they met the late Kalingam s/o Mariappan (the "deceased") whom they both knew. The 1st Appellant had known the deceased for a number of years but there was bad blood between them, and they had frequent quarrels and fights. The Appellants had a conversation with the deceased and together they had some drinks; the Appellants each had a beer and the deceased had a stout. After that the Appellants invited the deceased to go with them to Changi Airport for some drinks. At first the deceased refused but later he was persuaded to go along. The 1st Appellant drove his uncle's lorry, No. Y5505 with the deceased seated beside him and the 2nd Appellant at the back. On the way there the 1st Appellant had a quarrel with the deceased and the 1st Appellant drove the lorry to a side track at East Coast Parkway and stopped the lorry. All three of them alighted from the lorry. The 1st Appellant took a rake which was in the lorry and hit the deceased on the head with it. The deceased fell, got up and ran. The 1st Appellant tried to stop him but failed. He called upon the 2nd Appellant to catch the deceased which the 2nd Appellant did. The 1st Appellant then went up to the deceased, caught hold of him and dragged him along for a short distance. He gave the rake to the 2nd Appellant and the 2nd Appellant then hit the deceased twice on the head with the rake. The blows landed on his nose and he fell. The 1st Appellant then placed his foot on the deceased's chest and asked the 2nd Appellant to bring some petrol from the lorry. The 2nd Appellant brought the petrol, poured it over the deceased's body and the 1st Appellant then lighted a match and set fire to the deceased, who got up and ran around howling in pain. They then left the deceased.

Before the learned trial judges there was adduced expert evidence from Professor Chao Tzee Cheng, the Senior Forensic Pathologist, who performed an autopsy on the deceased. He reported that there were 3 serious fractures in the skull of the deceased: (1) a hairline cracked fracture of 3 cm. on the right frontal bone, (2) a depressed fracture 2.5 cm. on the right parietal bone and (3) a cracked fracture 3 cm. on the right parietal bone at

the temporal suture. In his opinion injuries (2) and (3) had caused internal brain damage which in the ordinary course of nature would have caused death and death would have followed a few minutes after the injuries. Professor Chao also said that when the deceased was on fire he was still active and that 40% of his total body surface was burnt and such extent of burn would be sufficient in the ordinary course of nature to cause death.

On the evidence the learned trial judges found it was the 2nd Appellant who inflicted the fatal blow on the deceased's head, and that there was common intention of both the Appellants to cause injuries to the deceased which in the ordinary course of nature would cause death. They said, at pages 28 – 29:

"Admittedly, the second accused might not have had the intention to cause hurt to the deceased even up to the time when the lorry stopped at the track off East Coast Parkway but when he chased and caught the deceased, that was when he formed the intention to join the first accused to cause hurt to the deceased. What followed clearly established that common intention. After the second accused caught the deceased the first accused came and grabbed hold of the deceased by the neck from behind. Then the second accused hit the deceased on the head with the rake which the first accused had handed to him. Together they then set the deceased on fire."

Before us Mr. Subhas Anandan on behalf of the 1st Appellant proceeded on only one ground of appeal, namely, the absence of common intention to cause injuries sufficient in the ordinary course of nature to cause death, and expressly abandoned all the other grounds of appeal and in particular the contention that the statement made by the 1st Appellant under section 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not made voluntarily. He argued that the learned trial judges found that it was the 2nd Appellant, who inflicted the fatal blow on the deceased, and at that time no common intention had been formed by the Appellants. He conceded, however, that at the time the 2nd Appellant poured petrol on the deceased both of them formed the common intention but at that time the deceased was already dead.

We were unable to accept this argument. On the evidence before the learned trial judges it could hardly be said that both the Appellants at the time or immediately before the fatal blow was inflicted did not have the common intention to cause injuries to the deceased which in the ordinary course of nature would cause death. Further, the evidence also showed that the deceased was still alive when the 2nd Appellant poured petrol on the deceased and the 1st Appellant set fire on the deceased.

Mr. Pala Krishnan on behalf of the 2nd Appellant did not really proceed with his argument on the appeal; he also abandoned the contention that the statement made by the 2nd Appellant under section 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not voluntary. Nor did he dispute the finding of the learned trial judges that the 2nd Appellant inflicted the fatal blow. So far as the 2nd Appellant is concerned the absence of a common intention was immaterial as he was the one who inflicted the injuries which caused the death of the deceased, and on the evidence there was nothing which could be usefully urged on his behalf.

We therefore dismissed the appeal and affirmed the convictions of both the Appellants.

Appeal dismissed.

Solicitors: *M.P.D. Nair & Co.; Selvadurai Pala Krishnan & Partners.*

THAM YEW HENG & ANOR. v. CHONG TOH CHENG

[O.C.J. (Thean J.) December 19, 1984]
[Singapore – Suit No. 2295 of 1982]

Tort – Negligence – Contributory negligence – Road accident – Brain damage to boy aged 9 – Quantum of damages.

Damages – Brain injury – Boy aged 9.

The 1st plaintiff, a nine-year old boy at the time of the accident, brought this action by his mother, the 2nd plaintiff, against the defendant for damages for personal injuries sustained by the plaintiff as a result of the negligent driving of a motorcar by the defendant on August 4, 1979. The plaintiff, while crossing a road, was knocked down by the defendant's car.

The plaintiff suffered severe brain damage. After the accident he was admitted to the Alexandra Hospital and later transferred to Tan Tock Seng Hospital. He was unconscious for 3 days, and was unable to speak for 1 week. He sustained a fracture of the right maxilla and a laceration of the right cheek. A right periorbital hematoma was noted as well as a swelling over the right maxillary region. He was discharged from hospital on August 29, 1979. Dr Michael H.L. Yap, a neurologist, was of opinion that after a lapse of about 5 years since the accident, the 1st plaintiff's improvement, if any, would not be significant. Dr. Nei I-Ping, a consultant neurologist, concluded that the 1st plaintiff had